



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 17, 2003

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2003-2591

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179633.

The College Station Police Department (the "department") received a request for the following information regarding a named police officer:

1. Any and all complaints filed by private citizens, other members of law enforcement, the City of College Station or the City of College Station Police Department against the above referenced officer;
2. Any and all names of persons interviewed in the course of investigating said complaints;
3. Any and all written responses of the above referenced officer to such complaints;
4. Any and all final determinations regarding the above said complaints, including but not limited to, any reductions in pay, demotions in rank, required counseling, or corrective training;
5. Any and all letters advising of any disciplinary action related to said complaints;
6. Proof that the above referenced officer completed any recommended counseling or corrective training as a result of a complaint being filed against him or her;
7. The above referenced officer's employment background;
8. The above referenced officer's original application to become a police officer which was submitted to the City of College Station Police Department;

9. Any and all police academy scores and/or evaluations which are in the possession of the City of College Station Police Department and/or the City of College Station regarding the above referenced officer;
10. Any and all certificates of completion concerning continuing law enforcement training in the possession of the City of College Station Police Department and/or the City of College Station regarding the above referenced officer;
11. Any and all evaluations and/or scores concerning continuing law enforcement training in the possession of the City of College Station Police Department and/or the City of College Station regarding the above referenced officer;
12. The current salary of the above referenced officer;
13. The current amount of overtime pay for the year of 2000, 2001, and 2002 accumulated by the above referenced officer as of the date of this request; [and]
14. Any and all specialized units (i.e. drug task force, DWI task force, etc.) that the above referenced officer has been assigned to while employed by the City of College Station Police Department.
15. Scores, and results on any and all examinations, or test [sic] performed by the officer.

You state that information responsive to categories 12 and 13 (the officer's salary and overtime information) has been released to the requestor with certain information redacted pursuant to a previous determination. *See* Open Records Decision No. 670 (2001). You claim that the submitted information is excepted from disclosure pursuant to a previous determination, and in the alternative, under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You state that the officer whose information is at issue was the arresting officer in two pending DWI cases, and that the officer will be the state's main witness in both cases. In Open Records Letter No. 2003-1986 (2003), this office found that where there is a pending prosecution and the officer in question is the arresting officer in a DWI case, the officer will be a witness in the prosecution, and the information is the type of information used at trial to determine the credibility of the officer, competency to testify, and qualification as an expert witness, the above-listed categories of information, except for categories 12, 13, and 15, may be withheld pursuant to a previous determination. Therefore, we find that this information may be withheld pursuant to the previous determination granted in Open Records Letter No. 2003-1986. *See* Open Records Decision No. 673 (2001).

To the extent that the department maintains additional information responsive to category 15 of the request, we address your argument under section 552.108. Section 552.108(a) excepts

from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending DWI prosecution in Brazos County Court, and you have provided a letter from the Brazos County Attorney’s Office in support of your claim. *See* Open Records Decision No. 372 at 4 (1983) (law enforcement exception may be invoked by any proper custodian of information relating to an incident allegedly involving criminal conduct that remains under active investigation or prosecution). You also explain that the submitted information could be used at trial to attack the credibility of the arresting officer, whose records are at issue, in the case being prosecuted. Based upon the representations in your brief and in the submitted letter from the Brazos County Attorney, we conclude that the release of information responsive to category 15 of the request would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.–Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, you may withhold this information pursuant to section 552.108 of the Government Code. As we are able to make this determination, we need not address your argument under section 552.103 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", written over a horizontal line.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 179633

Enc. Submitted documents

c: Mr. Chad E. Jones
Jones Law Firm, P.C.
115 N. Main Street
Bryan, Texas 77803
(w/o enclosures)